UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,168	04/24/2001	John C. Droge	230074-0236	4113

		EXAMINER
7590	12/06/2005	LEMMA, SAMSON B

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ART UNIT	PAPER NUMBER
2132	

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	*09/841,168*	DROGE, JOHN C.
	Examiner Samson B. Lemma	**Art Unit** 2132	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>14 November 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, ~~the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.~~

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>*1-55*</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.

G. Barron B (signature)
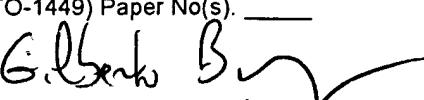
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Continuation of 11. does NOT place the application in condition for allowance because: Applicant first argument is based on claim 42. Applicant argued that Markandey and Peirce only describe scrambling and encrypting of packetized data at a data link layer and not encrypting the non-packetized data at a data link layer.
Examiner disagree the above argument and asserts the fact. First the primary reference on the record, Markandey discloses
  Encrypting the non-packetized data (Figure 7, reference "SCRAMBLED DATA" shown at "Transmitter");
  Packetizing the data; (figure 7, reference "TRANSMITTER", 1394 DATA PACKING")
  Encrypting the packetized data (Figure 7, reference "ENCRYPT"); and
And, the second reference on the record, Peirce further discloses the method of coordination of encryption and compression for data en route from the host computer to the mobile station between different layers one of which is capable of performing PPP level encryption which is data link layer encryption as explained on the same reference on column 5, lines 27-29) and the other of which is capable of performing IP level or layer encryption.(Column 4, lines 46-52) Peirce further discloses how the internet is used for communicating two interfaces (figure 2, ref. Num "20"). Therefore It is obvious to one having ordinary skill in the art, at the time the invention was made, to combine the feature of encryption at the data link layer as disclosed by Peirce in to the method of encypting the non-packetized data as taught by Markandey and come up with the limitation of the claim.

Applicant Second argument is based on the limitation in the independent claim 1.
Applicants made the following remark in support of the amendment, that Markandey, the reference on does not anticipate the features recited in claim 1.
First, Markandey does not teach or suggest "encrypting the data a first time such that the data is once encrypted," as recited in claim 1. On page; 3, lines 7 8, the Action states that the claimed "encrypting data for a first time" is anticipated by the reference "DVD" of FIG. 7 from Markandey. In FIG. 7, Markandey discloses a transmitter that reads scrambled data from a DVD along with a Scramble Pattern 11E) (see Markandey, paragraph [0075]), but does not 15 disclose that the transmitter encrypts the data read from the DVD for a first time. Instead, the scrambled data of Markandey is stored on the DVD itself (see Markandey, paragraph [0075]). Thus, the transmitter does not perform scrambling. Since the transmitter of Markandey does not performing a step of scrambling data, it also does not include a step of "encrypting the data for a first time," and thus the transmitter does not anticipate this feature in claim 1. Therefore, Markandey does not anticipate claim 1.
  Examiner disagrees with this argument. The examiner point out that the claim does not specify the fact that the transmitter is the entity that performs the scrambling, what is stated in the claim is the features of "encrypting the data a first time such that the data is once encrypted", this limitation indicates the fact that that some how the data is encrypted for the first time and as far as the reference on the record is concerned, Markandey, indeed disclosed this limitation [See figure 7, "Scrambled data"].
  The specification is not the measure of invention. Therefore, limitations contained therein can not be read into the claims for the purpose of avoiding the prior art. See In re Sporck, 55 CCPA 743, 386 F. 2d 924, 155 USPQ 687 (1968)
  The third argument made by the applicant is recited as follows,
Encryption and scrambling are different processes according to Markandey. On page 3, lines 7 8, the Action states the claimed step of "encrypting the data for a first time" is anticipated by the scrambled data in FIG. 7 of Markandey. However, in the description, Markandey distinguishes between encryption and scrambling. Specifically, Markandey describes the encryption process as encoding data using the Data Encryption Standard (DES), which encrypts 64 bit blocks of data using a 64 bit session key to produce a 64 bit encrypted result (see Markandey, paragraph [0025]). Thus, Markandey describes encryption as a process of encoding data using a key. In contrast, Markandey describes scrambling as interchanging the order of various digital bits according to a scramble pattern, and provides examples of various scramble patterns in Table 5 (see Markandey, paragraph [0071]). Clearly, Markandey does not consider encryption equivalent to scrambling. Thus, scrambling is not the same as or equivalent to encryption in the system of Markandey. Therefore, even if Markandey taught scrambling as a step in his process, this reference would not anticipate claim 1 since scrambling is not equivalent to encryption according to Markandey.
Examiner disagrees with this argument, as far as the Marandey is concerned the scrambling is done by interchanging the order of the various digital bits according to a scramble pattern such as shown below.[see paragraph "0071"]. The ultimate purpose of encryption process is to scramble a message so that the data is transformed into unreadable form by different techniques. Both processes, namely "Encryption" and "Scrambling" are used for deliberately concealing the data so that the data will be transmitted securely to it's intended destination. The "19TH Updated, Improved and Expanded Edition, Newton's Telecom Dictionary, define the term, Encryption as "A fancy term for scrambling a message so that no one can read it except the person for whom it's intended.
Both processes, "Encryption" and "Scrambling" are used for security purposes and they are not patentably distinguishable terms as long as they are used for the same purposes. These terms are usually used interchangeably to mean one and the same thing or perform one and the same function and this is clear for one of ordinary skill in the art. "Encrypting a message" and "Scrambling a message" are for instance mean one and the same thing as far as the above dictionary's definition is taken into account.
  The fourth argument by the applicant is in relation to the independent claim 14.
Examiner disagrees with argument made to claim 14, since applicant's argument is based on the argument presented for claim 1 and the examiner response provided to claim 1 is also applicable towards this argument.

Applicant's other argument is regarding the dependent claims.
Applicants argued that the since the independent claims are patentable therefore all the claims dependent on the independent claims thereon are also in condition for allowance for the same reasons argued for the independent claims.
In response to the above argument by the applicant, the examiner response discussed to the independent claims presented above is also valid towards this argument.
Therefore all the elements of the limitations of claim 1-55 is explicitly or implicitly or inherently suggested and disclosed by the reference/s on the records.
The rejections remains to be valid unless and otherwise the claims ₂are further amended to introduce/include detail elements of the

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invention with out adding new matters and the claim limitation not the specification should contain limitation that are not taught/described/suggested/disclosed by the references on the record.